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Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

List of issues prior to submission of the seventh periodic report of Austria*

Specific information on the implementation of articles 1–16 of the Convention, including with regard to the Committee's previous recommendations

Follow-up questions from the previous reporting cycle

1. With reference to the Committee's previous concluding observations (para. 9)[1] and the State party's follow-up reply (p. 1),[2] please provide updated information on any steps taken to establish a fully independent body or mechanism to investigate allegations of torture and ill-treatment by law enforcement officials. Please also update the Committee on the achievements during the period under review of the Federal Bureau of Anti-Corruption (BAK)[3] with regard to its investigation into allegations of torture, ill-treatment and excessive use of force by the police, prison staff and security and military personnel. Please explain how the independence of BAK is guaranteed so that there is no hierarchical or institutional link between the alleged perpetrators and the investigators.

Articles 1 and 4

2. With reference to the Committee's previous concluding observation (para. 10), please indicate whether the State party intends to amend section 312 (a) (1) of the Criminal Code by raising the minimum penalty — which is currently 1 year of imprisonment — for acts of torture to bring it into line with article 4 (2) of the Convention.

3. Please provide details on cases of torture and ill-treatment in which the aggravating and mitigating circumstances provided for section 33 of the Criminal Code have been applied during the reporting period (para. 36).

Article 2

4. With reference to the Committee's previous concluding observations (para. 13) and the State party's follow-up reply,[4] please provide updated information on the efforts to expand and strengthen the mandate of the Austrian Ombudsman Board with regard to allegations of abuse by law enforcement officials. Please describe any measure taken to bring the selection and appointment process of members of the Austrian Ombudsman

* Adopted at its sixty-second session (6 November–6 December 2017).

[1] Unless otherwise indicated, paragraph numbers in parentheses refer to the previous concluding observations adopted by the Committee (CAT/C/AUT/CO/6).

[2] See CAT/C/AUT/CO/6/Add.1, paras. 2–3.

[3] See CAT/C/AUT/6, para. 129.

[4] See CAT/C/AUT/CO/6/Add.1, paras. 10–14.

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Board into full compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles). Please also clarify whether the Austrian Ombudsman Board has been provided with sufficient financial, technical and human resources necessary to fulfil its mandate on a fully independent basis.

5. In the light of the Committee's previous concluding observations (para. 15), please provide information on the steps taken to effectively implement the recommendations generated by the Austrian Ombudsman Board in its capacity as the national preventive mechanism.

6. With reference to the Committee's previous concluding observations (para. 17) and the State party's follow-up reply, [5] please provide information on the legislative, administrative and other measures taken to guarantee that all persons deprived of their liberty enjoy all the fundamental legal safeguards. Please also provide information on the measures taken to ensure that:

(a) All persons deprived of their liberty have access, in practice, to competent, independent and free legal counsel, if needed, from the outset of the deprivation of liberty, including during interrogation by police and in administrative proceedings;

(b) Section 164, paragraph 2, of the Code of Criminal Proceedings, which requires police to delay the questioning until the arrival of the lawyer, is implemented in practice;

(c) Public officials' compliance with fundamental legal safeguards is closely monitored and those not complying with such safeguards are punished accordingly. In this regard, please indicate the number of complaints of denial of fundamental legal safeguards and the outcome of the cases, including penalties and compensation.

7. Please provide updated information on measures taken to ensure that persons subjected to a court-ordered measure of forensic placement (*Massnahmenvollzug*), particularly at Stein Prison, are guaranteed fundamental legal safeguards and have access to adequate physical and mental health care. Please provide updated information on the reform of the overall *Massnahmenvollzug* system that was in progress at the time of the visit by the European Committee for the Prevention of Torture.

8. With reference to the Committee's previous concluding observations (para. 19) and the State party's follow-up reply, [6] please provide updated information on the implementation of the recommendations made by the working group regarding the lack of female prison personnel. Please also describe any other efforts made to increase the number of female police officers and prison personnel and diversify the ethnic composition. Please provide annual statistical data on the number of female and ethnic police officers and prison personnel in relation to the total number.

Article 3

9. With regard to the Committee's previous concluding observations (paras. 21 and 23) and the State party's follow-up reply, [7] please provide information on the allocation of financial and human resources to the Federal Office for Immigration and Asylum during the period under review and its impact on the capacity of the office to process pending asylum applications. Please also provide information on the measures taken to ensure that:

(a) All asylum seekers enjoy procedural guarantees, such as adequate access to independent, qualified and free legal representation and interpreters throughout the asylum procedure, including the first-instance procedure and appeals. In this regard, please provide information on the number of asylum seekers who have received free legal aid during the period under review;

[5] Ibid., para. 1.
[6] Ibid., paras. 15–16.
[7] Ibid., paras. 4–5.

(b) Asylum applications by persons from "safe countries of origin" and safe third countries are examined with due consideration for the applicant's personal situation and the applicant has the possibility to rebut the presumption of safety in his or her particular case;

(c) Vulnerable asylum seekers, such as victims of torture and trafficking — especially child victims[8] —, are identified without delay, immediately referred to the relevant authorities and granted priority access to the asylum determination procedure;

(d) Asylum seekers have access to confidential medical examinations without police or prison personnel being present, both during the initial reception phase and while in detention pending deportation particularly at the PAZ Hernalser Gürtel and the Vordernberg Detention Centre;

(e) Educational programmes and training are provided to doctors and other medical personnel in direct contact with asylum seekers on identifying and reporting to the relevant authorities suspected cases of torture, trafficking and police ill-treatment.

10. In the light of the amendment to the Asylum Act, which enables the Government to declare a state of emergency in cases of a mass influx of asylum seekers, please: (a) provide information about the mechanisms and criteria applied — particularly at borders, where police officials must determine the admissibility of claims — in the context of expulsion, return, surrender or extradition procedures to evaluate and verify the risk that a person may be subjected to torture upon return; and (b) clarify whether such a fast-track admissibility procedure at the borders provides the necessary guarantees to ensure strict compliance with the principle of non-refoulement under article 3 of the Convention.

11. Please explain the steps taken to ensure that unaccompanied asylum-seeking children are housed in care facilities that suit their specific needs. Please provide information on measures taken to alleviate the unfavourable living conditions for children at Traiskirchen Initial Reception Centre and the federal support facility in Leoben. Please clarify whether unaccompanied asylum-seeking children, including those older than 14, are provided age-appropriate care and support, including access to education. Please indicate whether: (a) qualified guardians are appointed for unaccompanied asylum-seeking children without delay; and (b) clearing centres where the specific needs of children are assessed by qualified personnel have been established as recommended by the Austrian Ombudsman Board.

12. With reference to the Committee's previous concluding observations (para. 21), please describe the measures taken to improve the reception conditions of asylum seekers, particularly at the Traiskirchen Centre. Please also provide information on the number of reception centres for asylum seekers that are currently in use and their annual occupancy rate.

13. Please provide information about the number of asylum applications received during the period under review, the number of successful applications and the number of asylum seekers whose applications were accepted because they had been tortured and/or might be tortured if returned to their country of origin. Please include information, disaggregated by sex, age and country of origin, on the number of persons who have been returned, extradited or expelled since the consideration of the State party's previous periodic report. Please provide details on the grounds on which they were returned and the countries to which they were returned. Please provide updated information on the type of appeal mechanisms available, whether any appeals have been made and, if so, the outcome of those appeals.

14. Please indicate the number of cases of refoulement, extradition and expulsion carried out by the State party during the reporting period based on the acceptance of diplomatic assurances or the equivalent thereof and any instances in which the State party has offered such diplomatic assurances or guarantees. What is the minimum content of any such assurances or guarantees, either given or received, and what measures have been taken with regard to subsequent monitoring in such cases?

[8] See CCPR/C/AUT/CO/5, paras. 25–27.

Articles 5–9

15. Please indicate whether the State party has rejected, for any reason, the request of a State for the extradition of an individual suspected of having committed torture since the consideration of the State party's previous report, and whether it has started prosecution proceedings against such an individual as a result. If so, please provide information on the status and outcome of the proceedings.

Article 10

16. With reference to the Committee's previous concluding observations (para. 25) and the State party's follow-up reply,[9] please clarify whether all public officials, including law enforcement, prison and immigration officers as well as judges who may be involved in the custody, interrogation or treatment of persons deprived of their liberty, receive training on the provisions of the Convention. Please clarify whether training on the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol) has been provided to medical personnel and other officials who deal with detainees and asylum seekers and are involved in the investigation and documentation of cases of torture.

17. Please indicate whether the State party has developed a specific methodology to evaluate the effectiveness and impact of the training provided to law enforcement and judicial personnel on the prevention and absolute prohibition of torture.

Article 11

18. In the light of the Committee's previous concluding observations (para. 22) and the State party's follow-up reply,[10] please provide information, disaggregated by age, sex and country of origin, on the number of asylum seekers deported by the State party during the period under review, the number detained pending deportation and the number to which alternative measures to detention were applied. Please provide updated information on the efforts made to improve conditions in pre-deportation detention facilities, in particular the PAZ Hernalser Gürtel in Vienna. Please describe the safeguards in place to ensure that the use of detention pending deportation is limited to exceptional cases only and for as short a time as possible.[11]

19. With reference to the Committee's previous concluding observations (para. 27) and the State party's follow-up reply,[12] please provide information on the measures taken during the period under review to reduce prison overcrowding,[13] including the use of alternatives to imprisonment, both before and after trial. Please provide statistical data, disaggregated by year, sex, age, ethnic origin or nationality, on the number of pretrial detainees and convicted prisoners and the occupancy rate in all places of detention.

20. Please describe the measures taken to improve the material conditions of detention, increase out-of-cell activities and access to work opportunities and rehabilitation programmes and increase the number of qualified staff in direct contact with prisoners.

21. Please describe the steps taken to amend domestic laws and practice regarding solitary confinement, especially its abolishment for juveniles, to be in line with international standards. Please provide information on: (a) the procedure and conditions for imposing solitary confinement, including oversight of its use; (b) the number of detained persons placed in solitary confinement; (c) the maximum and average duration of solitary confinement; and (d) the safeguards applied to inmates in disciplinary procedures.

22. With reference to the Committee's previous concluding observations (para. 31) and the State party's follow-up reply,[14] please provide statistical data, disaggregated by place of

[9] See CAT/C/AUT/CO/6/Add.1, paras. 18–21.
[10] Ibid., paras. 4–5.
[11] Ibid., para. 30.
[12] Ibid., paras. 22–24.
[13] See CAT/C/AUT/6, para. 68.
[14] See CAT/C/AUT/CO/6/Add.1, paras. 6–9.

detention, sex, age and ethnic origin of the individuals concerned, on deaths in custody, indicating the cause of death. Please provide detailed information on how investigations are conducted, the results of the investigations into deaths in custody and the measures taken to prevent the recurrence of such cases.

23. With reference to the Committee's previous concluding observations (para. 29) and the State party's follow-up reply,[15] please indicate the measures taken to ensure that:

(a) All persons deprived of their liberty, especially those with mental health conditions, receive adequate medical and mental health care. Please indicate whether the number of doctors and psychiatrists has increased at Feldkirch, Graz-Karlau and Garz-Jakomini prisons[16] and whether other inmates, instead of nursing staff, continue to provide nursing activities to inmates with mental conditions at the Wilhelmshöhe satellite facility;

(b) All newly admitted detainees have access to comprehensive medical examinations by a doctor within 24 hours of admission, without a prison guard being present, unless the doctor so requests;

(c) The medical report contains: (i) a record of relevant statements made by the individual concerned (including their description of their state of health and any allegations of ill-treatment); (ii) a full account of objective medical observations based on a thorough examination, including a description of any injuries; and (iii) the doctor's conclusions in relation to (i) and (ii) above, regarding the consistency of any allegations of ill-treatment with the objective medical findings;

(d) The medical personnel are able to report, on a confidential basis, any signs of torture or ill-treatment directly to the public prosecutor.

Articles 12–13

24. In relation to the Committee's previous concluding observations (para. 37) and the State party's follow-up reply,[17] please provide information on the measures taken to ensure that all instances and allegations of torture and ill-treatment are investigated promptly, effectively and impartially, regardless of the presence of visual signs of torture.[18] Please provide statistical data on the number of complaints, investigations, prosecutions, convictions and punishments of torture and ill-treatment, including excessive use of force committed by law enforcement and prison officials, and recent examples of such complaints. Please update the Committee about: (a) the State party's study on the discrepancy between the number of criminal convictions for torture and ill-treatment and the number of allegations (p. 1); (b) the redrafting of the decree of the Ministry of Justice concerning the handling of allegations of ill-treatment of detainees; and (c) the new decree of the Federal Ministry of the Interior concerning allegations of abuse.

25. Please provide updated information on any mechanism in place for receiving complaints of torture and ill-treatment, including excessive use of force in custodial facilities, which guarantees the confidentiality of the complaints and the protection of the complainants, including reporting officers, against intimidation and reprisal as a consequence of their complaints. Please indicate whether detainees are informed about the possibility of and the procedure for filing a complaint about alleged torture or ill-treatment by State officials. Please clarify whether such information has been publicized widely, including by displaying it in all places of detention.

26. Please inform the Committee of the status and outcomes of the criminal and disciplinary proceedings against prison personnel for the prolonged neglect of a 74-year-old detainee in Stein Prison, and the criminal investigation against a prison officer at Graz-Karlau Prison who allegedly beat an inmate in July 2014.

[15] Ibid., paras. 25–27.
[16] See CCPR/C/AUT/CO/5, para. 23.
[17] See CAT/C/AUT/CO/6/Add.1, paras. 2–3.
[18] See CCPR/C/AUT/CO/5, para. 21.

Article 14

27. In the light of paragraph 46 of the Committee's general comment No. 3 (2012) on the implementation of article 14 by States parties and its previous concluding observations (para. 39), please provide information on redress and compensation measures, including the means of rehabilitation ordered by the courts and actually provided to victims of torture or their families during the period under review. Please include information on the number of requests made, the number granted, the amounts ordered and those actually provided in each case. Please provide information on any ongoing reparation programmes, including treatment for trauma and other forms of rehabilitation provided to victims of torture and ill-treatment, and on the material, human and budgetary resources allocated for their effective functioning.

Article 16

28. With reference to the Committee's previous concluding observations (para. 31) and the State party's follow-up reply,[19] please provide updated information on the measures taken, including oversight measures, to ensure that the electrical discharge weapons are strictly subject to the principles of necessity and proportionality. Please indicate whether there has been any complaint by detainees with regard to the use of electrical discharge weapons and if so, please provide details of such complaints, the investigations conducted and the results. Please inform the Committee about any injuries, including deaths, caused by the use of electrical discharge weapons.

29. With reference to the Committee's previous concluding observations (para. 41) and the State party's follow-up reply,[20] please indicate whether specific registers have been created to record all uses of restraint measures in psychiatric and social welfare institutions, particularly the Otto Wagner Hospital. If so, please indicate whether the registers contain information on the type of restraint, reasons for use and the duration of use; and whether such registers are regularly monitored by an independent body. Please explain the safeguards in place to ensure that such restraint measures are only used as a last resort. Please provide updated information on the alternative measures currently used by psychiatric and social welfare institutions following the ban on the use of net beds.

30. In the light of the Committee's previous concluding observations (para. 45), please provide updated information on:

(a) The measures taken to ensure that no child is subjected to non-urgent medical or surgical procedures intended to decide the sex of the child; that such procedures are postponed until the child is mature enough to make a fully informed decision; and that all intersex persons subjected to such procedures without their consent are adequately compensated;

(b) The procedures for informed consent for surgical interventions and whether that includes independent counselling, inter alia, by intersex persons and their organizations.

31. Please provide data on cases of hate crimes reported during the period under review, disaggregated by type, indicating those that involved the commission of or incitement to violence. Please also provide data on prosecutions for hate crimes and the outcomes.

Other issues

32. Please provide updated information on the measures taken by the State party to respond to any threats of terrorism. Please describe if and how those antiterrorism measures have affected human rights safeguards in law and in practice and how the State party has ensured that those measures comply with all its obligations under international law, especially the Convention, in accordance with relevant Security Council resolutions, in particular resolution 1624 (2005).[21] Please provide information on the relevant training provided to law enforcement officers; the number of persons convicted under antiterrorism

[19] See CAT/C/AUT/CO/6/Add.1, paras. 6–9.

[20] Ibid., para. 32.

[21] See S/2001/1313; S/2002/1086; S/2003/912; S/2004/876; and S/2006/215.

legislation; the legal safeguards and remedies available to persons subjected to antiterrorist measures in law and in practice; whether there have been complaints of non-observance of international standards; and the outcome of those complaints.

General information on other measures and developments relating to the implementation of the Convention in the State party

33. Please provide information on any other relevant legislative, administrative, judicial or other measures taken since the consideration of the State party's previous report to implement the provisions of the Convention or the Committee's recommendations, including institutional developments, plans or programmes. Please indicate the resources allocated and statistical data. Please also provide any other information that the State party considers relevant.